IMPRISON ME NT:
PAPERLESS ARRESTS AND THE RISE OF EXECUTIVE POWER IN THE NORTHERN TERRITORY

by Jonathon Hunyor

'It is a form of catch and release.'[1]

When the Northern Territory Attorney-General likened arrest and detention by police under the proposed 'paperless arrest' regime to recreational fishing, it raised barely a ripple. Perhaps this is no great surprise. The Northern Territory ('NT') has long been a gold-medal performer when it comes to locking people up.

In the March quarter of 2015, the NT's daily imprisonment rate was 904 people per 100 000, compared to the national average of 194.[2] The NT also recorded the largest increase in the average daily imprisonment rate of all jurisdictions over the preceding 12 months, from 864 to 904 prisoners per 100 000. Aboriginal people make up about 85 per cent of the adult prison population, despite being less than 30 per cent of the general population.

It gets worse when you consider the statistics for children. The national daily youth detention rate for 2013–14 was 3.5 young people per 10 000. The NT's youth detention rate was over five times that, at 17.9 per 10 000.[3] Aboriginal children make up 95 per cent of the juvenile detention population in the NT.

On 11 November 2015, the High Court of Australia handed down its decision in *North Australian Aboriginal Justice Agency Ltd v Northern Territory* in which the Court, by a majority of 6:1, dismissed a challenge to the validity of the 'paperless arrest' laws.[4] This article considers that decision, and places it in the context of other developments in the law in the NT that have contributed to a culture of mass incarceration. It also examines more broadly the way in which coercive power has been concentrated in the hands of executive government in the NT, shifting power away from the courts. Finally, it reflects on the way in which such power is exercised over Aboriginal people.

PAPERLESS ARRESTS

> [H]aving studied law and political science I get the concept of liberty. But in the practical, real world of Mitchell Street when people are standing on street corners with their pants around their ankles blaring out expletives or baring their buttocks to passing cars, expectorating, fornicating, urinating, defecating and doing all the other things they do when they have a skin full of juba juice, we can now say to the police, 'Go out, lift them, pull them out of circulation'.[5]

So said the Northern Territory Attorney-General of the 'paperless arrest' regime that commenced in the NT on 17 December 2014.

The regime is contained in Div 4AA of the *Police Administration Act* (NT). If police arrest you because they believe on reasonable grounds that you have committed or were about to commit an 'infringement notice offence',[6] they can hold you for up to four hours, or until you are no longer intoxicated.[7] At the end of the period they can either release you unconditionally, issue you with an infringement notice, release you on bail, or bring you before a court.[8]

An 'infringement notice offence' is defined to include a range of offences for which an on-the-spot fine can be issued under the *Summary Offences Act*, the *Liquor Act* and the *Misuse of Drugs Act*. This includes such offences as failing to keep a front yard clean,[9] singing an obscene song,[10] abandoning a refrigerator or ice chest,[11] playing a musical instrument so as to annoy[12] and leaving dead animals in a public place.[13]

More to the point it also includes common street and 'public order' offences such as consuming liquor at a regulated place in a designated area,[14] offensive conduct[15] and possessing small amounts of cannabis oil, resin or seed.[16]

Remarkably, the penalty for some of the offences to which the regime applies is a fine only. A court could not lock you up for the offence, but the police can hold you for up to four hours—or longer if you have a 'skin full of juba juice'.

In the first seven months of operation, the law was used to lock up 1295 people. Over 70 per cent of those people were Aboriginal.[17]

IT'S NOT ABOUT THE PAPER

'Paperless arrest' is, in fact, a misnomer. The power of arrest is completely unchanged by the regime[18] as is the amount of paperwork involved in the arrest itself.

At the end of your time in custody, the police have the same options as they have always had: release you unconditionally (for example with a warning); release you with an infringement notice; release you on bail; or bring you before a justice or court for the offence. The amount of paperwork involved in each option is the same as it always has been.

In fact, for the first two of the options (release without charge or release with an on-the-spot fine), the regime involves *more* paperwork, not less.[19] If you are taken into custody, police must still process you at the watch house and are required to take and record your name as well as identification information.[20] This is 'paperwork' which could be avoided by simply giving someone a warning or an on-the-spot fine at the outset.

As an important aside, requiring people to be processed upon arrest may seem like an apparent concession to avoiding incommunicado detention, but it is worth noting that it does serve the useful purpose of enabling (indeed requiring) the police to obtain and record a person's name, and 'information relevant to the person's identification, including photographs, fingerprints and other biometric identifiers' to be taken and recorded.[21] This is a handy opportunity to harvest personal information beyond that required for the immediate purpose.

In the first seven months of operation, the law was used to lock up 1295 people. Over 70 per cent of those people were Aboriginal.

But the essence of the regime is the power it gives to police to detain after arrest. What the law is designed to achieve is to allow police to take a person into custody and 'out of circulation' without necessarily having to be prepared to take them to court. This is the paperwork—and with that, the scrutiny—that the regime was designed to avoid.

It may seem ironic that the trigger for these new powers is an offence that would otherwise have been able to be dealt with by way of on-the-spot fine. The very purpose of summary infringement notice regimes is to allow for minor offences to be dealt with and punished without the need for arrest. But there is only really irony in this if you are not setting out to undermine the original purpose of the summary infringement notice regime. The NT Attorney-General, himself a former police officer, is no ironist:

> I am not really that warm towards summary infringement notices because of what the *Summary Offences Act* enabled police to do. It was a clean-up act. It was an act that enabled police to arrest a person and take them into custody and out of circulation.[22]

The Attorney-General remembers what he describes as those 'Jurassic' days fondly and says that 'to a degree it is back to the future':

> Modern policing can look back to us reptiles and know we remember a time when we used to arrest people regularly, put them in cells and control the streets effectively.[23]

THE DEATH OF KUMANJAYI LANGDON

The way the paperless arrest laws operate in practice was laid bare in the *Inquest into the death of Perry Jabanangka Langdon*.[24]

Kumanjayi Langdon was arrested on 21 May 2015 in a Darwin city park for the offence of drinking in a regulated place.[25] It was an offence for which he was ultimately given an on-the-spot fine of $74. The Territory Coroner concluded that the arrest was lawful, but unnecessary, finding:

> he was an old man minding his own business, enjoying the company of family and friends in an early evening of the dry season. He had been drinking, but had done nothing to bring himself to the attention of police, beyond being with other Aboriginal people in a park in the Darwin CBD.[26]

Kumanjayi Langdon was conveyed to the Darwin Police Station where he died less than three hours later. The Coroner concluded that while Kumanjayi Langdon died of natural causes, he was 'entitled to die a free man'.[27]

The Coroner described the paperless arrest laws under which Kumanjayi Langdon had been held as 'retrogressive'[28] and observed that 'a civilised society does not subject its citizens to [the] mortification [of arrest] unless there are no other reasonable options open'.[29] In a jurisdiction where the arrest of Aboriginal people for minor offences is commonplace, the Coroner gave this reminder of just some of the indignity involved:

> although the offence carried no term of imprisonment, Kumanjayi was handcuffed in public, placed in an iron cage in the back of a police van, transported away from family and friends, presented at the watch house counter with his arms still handcuffed behind his back, searched, deprived of his property, sat down and made to take his shoes and socks off and detained for some hours in a cell built to house criminals.[30]

The Coroner then took the extraordinary step of recommending that the laws be repealed, stating:

> Kumanjayi had the right to die as a free man and in the circumstances, he should have done. In my view, unless the paperless arrest laws are struck from the Statute books, more and more disadvantaged Aboriginal people are at risk of dying in custody, and unnecessarily so.[31]

THE CHALLENGE IN THE HIGH COURT

The North Australian Aboriginal Justice Agency ('NAAJA') and Miranda Bowden, an Aboriginal woman from the Katherine region, challenged the paperless arrest regime in the High Court. The plaintiffs argued the laws were invalid either because they gave punitive powers to police, contrary to the separation of powers under Chapter III of the *Constitution* (which, it was also argued, should be found to apply in the Northern Territory); and/or that the laws undermined the institutional integrity of the courts, contrary to the '*Kable* principle'.[32]

The majority of the Court found against the plaintiffs, concluding that the laws did not give police an 'unfettered discretion' to hold a person for four hours. Rather, the four hours is a 'cap' on detention, subject to the requirement that a person be brought before a court as soon as reasonably practicable unless sooner released.[33] Construed in this way the law was found not to be punitive, nor was it found to undermine the institutional integrity of the courts.[34]

The joint judgment of French CJ, Kiefel and Bell JJ noted that if the legislation had authorised detention for a significantly greater period, a question may arise as to whether it could still be characterised as administrative rather than punitive.[35] Considering the *Kable* argument, their Honours further noted that:

> It might be possible to envisage a scheme in which power was conferred on the executive in such a way as effectively to deprive the courts of supervision of its exercise. Such a scheme might on established principles, or some extension thereof, be impermissible. But that is not this case.[36]

In dissent, Gageler J held that the law gave police a broad and undefined discretion to hold people for up to four hours, unconstrained by the requirement to bring the person before a justice or court as soon as reasonably practicable, or the need to protect people or prevent harm.[37] His Honour concluded that the laws created a form of detention which 'results from the member acting not as an accuser but as a judge'[38] and stated:

> This is not an occasion to mince words. The form of executive detention authorised by Div 4AA is punitive. Because it is punitive, the imposition of the detention involves the exercise of a function which our constitutional tradition treats as pertaining exclusively to the exercise of judicial power.[39]

What the law is designed to achieve is to allow police to take a person into custody and 'out of circulation' without necessarily having to be prepared to take them to court.

While rejecting the plaintiffs' arguments based on the separation of powers in Chapter III of the *Constitution*,[40] Gageler J found that the laws did breach the *Kable* principle. This breach was found not on the basis of the law's attempt to exclude the involvement of the courts in the exercise of punitive power, but in the involvement of the courts if a person is dealt with otherwise than by unconditional release. If a person wishes to challenge their infringement notice, is charged and released on bail or is brought before a court, Gageler J held that:

> [t]he result of any prosecution which will occur . . . will be an adjudication which determines the criminal liability of the person. Whatever the outcome of that adjudication, the person will already have been punished through the executive detention that has occurred. No subsequent action by a court can change that historical fact.
>
> Courts of the Northern Territory are thereby made support players in a scheme the purpose of which is to facilitate punitive executive detention. They are made to stand in the wings during a period when arbitrary executive detention is being played out. They are then ushered onstage to act out the next scene. That role is antithetical to their status as institutions established for the administration of justice.[41]

Also dissenting, Keane J rejected both the plaintiffs' arguments seeking to apply the separation of powers to the NT and the application of the *Kable* principle. His Honour found that the separation of powers do not apply to the NT[42] and further that the laws do not 'add to or deprive any court of any function or characteristic of judicial power'.[43]

PRACTICAL IMPLICATIONS

While the High Court upheld the validity of the laws, the approach to construction does mean that the regime's operation is more constrained that it may otherwise have been. Prior to the decision, the practice of police was to issue an infringement notice at the time people were taken into the police cells, place the notice in their property and then give it to them upon their release.[44] It has now been conceded by the NT Attorney-General that such a practice is inconsistent with the interpretation the High Court.[45]

The High Court's decision requires that once police have decided how a person is to be dealt with, the person should be released (absent another lawful basis for their custody). The decision emphasises that the police are still subject to the overarching requirement to release a person or bring them before a court as soon as reasonably practicable and that detention for any longer will give rise to an action for false imprisonment.[46]

In practice, it is to be hoped the decision will limit the use of the regime and make police more careful to limit the time that people are held in custody. But it remains the reality that there will be very little opportunity for effective scrutiny of how the laws are being applied, and the regime still encourages arrest and detention for minor offences. It hardly needs to be said that this is directly contrary to the recommendations of the Royal Commission into Aboriginal Deaths in Custody which emphasised the need for arrest and detention to be a last resort, particularly for minor offences.[47] While the High Court has found the laws to be valid, they remain bad policy.

MANDATORY SENTENCING

The regime of paperless arrests is not an aberration. It sits comfortably within the prevailing culture of mass incarceration (or 'incarcerationalism')[48] in the NT and reflects an increasing trend of laws designed to exert more coercive power by executive government.

From 1 May 2013 the NT has had a new regime of mandatory sentencing for violent offences.[49] It is a somewhat complicated system, categorising offences into five different 'levels'. The length of the mandatory sentence depends upon the level of the offence and whether the offender has a previous conviction for a violent offence. Some first-time offenders will face 12 months imprisonment, some three months and others will have to serve some form of sentence of imprisonment but no minimum is set.

There is an 'exceptional circumstances' provision that is drawn reasonably broadly and helps to avoid some injustices.[50] However, the correct approach to that provision is still being thrashed out in the courts, and has included a case in which the magistrate at first instance sent a woman to jail for three months despite describing her circumstances as 'genuinely heart-wrenching' and offering the opinion that 'any civilised court would never send a woman in this particular situation to prison'.[51]

The quality of mercy is very much being strained.

Without going through the many general objections to mandatory sentencing, it is important to note that there is no evidence to suggest it prevents crime or makes the community safer. But in the NT, this doesn't necessarily mean that the regime is not considered a success. In parliamentary debates, the Attorney-General had this to say:

> There is also that reference that mandatory sentencing does not work … What are you trying to achieve? If you are trying to put people in gaol for committing serious offences it works. The person has committed the offence and gone to gaol. That works![52]

Another contribution to the parliamentary debates also reflects the extent to which imprisonment has come to be seen as an end in itself for Aboriginal people. Speaking in support of mandatory sentencing, Bess Nungarrayi Price, Member for Stuart and a Warlpiri woman from Yuendumu, had this to say:

> Gaol, to our people, is okay because families tell us they are happy their son, nephew, sister or cousin is in gaol for three months because they do not drink, do not get into trouble, are fed three times a day, are with their family members, sleep in language groups and come out of prison much healthier.[53]

I suggest, with respect, that this identifies the problem, not the solution. When life for people is so bad that jail looks good, it is not clear that responding with more jail is the best response.

MANDATORY ALCOHOL TREATMENT

The NT has also found another 'mandatory' in recent years, namely a regime of mandatory alcohol treatment.

It is established by the *Alcohol Mandatory Treatment Act* (NT), the effect of which is that people who are taken into protective custody by police three times in two months can be subject to detention for three months to undergo mandatory treatment for alcohol addiction.[54] Matters must go before a tribunal for an order for treatment. Among other things, the tribunal must be satisfied that a person's alcohol misuse is a risk to the safety and welfare of themselves or others, that they will benefit from mandatory treatment and that there is no less restrictive intervention to deal with the risk to themselves or others caused by their alcohol misuse. Following changes to the law in December 2014,[55] it is no longer an offence to abscond from a treatment centre.

Although there is a paucity of publicly available information on the regime, we know that the people subject to orders have almost all been Aboriginal.

Based on anecdotal accounts, what the regime does seem to achieve, at least when people are not running away (which they often are), is three months off the booze for some very sick people. That's something, but when there are no rehabilitation

facilities available in any remote Aboriginal communities, we might question the value of detaining people in town at great expense to force them to rehabilitate when those who might be motivated to deal with their grog problem cannot get help in their home community.

Writing in the *Medical Journal of Australia*, Lander, Gray and Wilkes have suggested that:

> concerns remain regarding the lack of evaluation of the program; the use of what is ostensibly a medical intervention to target a social problem; opacity around tribunal proceedings; the potentially discriminatory application of the scheme to Aboriginal people; and the scheme's questionable cost-effectiveness.[56]

But in the NT there is no problem so complex a bit of detention can't fix. In late 2012, the then Minister for Alcohol Policy, Dave Tollner, declared that the government's intention was to get 'problem street drunks' to 'hide out in the scrub, go somewhere where they are not in the public eye' with the threat of mandatory rehabilitation.[57]

ALCOHOL PROTECTION ORDERS

Alcohol Protection Orders ('APOs') are another NT novelty. Under this regime, police can issue you with an APO if you are charged with an offence punishable by more than six months in prison—as most things are in the NT—and the officer believes that you were affected by alcohol.[58]

Once on an APO:

- It an offence for you to possess or consume alcohol.[59] Drinking is criminalised.
- Police are given extraordinary powers under the law to stop, search and arrest you.[60]
- It is an offence for you to enter licensed premises,[61] except for work or residence.[62] Given most places in the NT sell beer, this makes it an offence to go to the football stadium, the entertainment centre, almost all small local supermarkets and the area of the airport from which interstate and international flights depart. There is a defence of a 'reasonable excuse', but that is little comfort if a police officer decides to arrest you and says you can explain it to the court.
- You can seek a reconsideration by a senior office of the decision to issue an APO in writing within three days.[63] There is a further right of review within seven days to the Local Court but only if the first avenue has been pursued.[64]

NAAJA obtained figures earlier in the year that showed that over 85 per cent of APOs issued have been to Aboriginal people.

Once again, the law is contrary to central recommendations of the Royal Commission into Aboriginal Deaths in Custody, by criminalising drinking and exposing many Aboriginal people to an intense cycle of police contact and arrest.[65]

A case brought in the NT Supreme Court challenging the APO laws[66] provides a sense of how the regime works on the ground. The plaintiff is a homeless Aboriginal man. His first language is Tiwi and he requires an English interpreter. He has very limited English literacy. He was given his first three-month APO having been arrested for stealing a bread roll, silverside and an orange juice worth $4.20 from a Coles supermarket while apparently intoxicated. Those charges were ultimately withdrawn.

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Three days after being placed on the APO, the plaintiff was arrested when he was found intoxicated by police. He was issued with a further six-month APO. A week later he was again arrested for drinking and was issued with a further 12-month APO. He was banned from drinking until January 2016. At the time of the litigation he had been arrested for breaching the APO on a total of 20 occasions, but had committed no other offences in that time.

The case is far from unique. NAAJA has another client who has been arrested 30 times now for drinking in contravention of his APO.

PARADE OF OTHER HORRIBLES

The last few years have seen a number of other laws and policies in the NT that run in a similar coercive or punitive vein, and have significance because of the way that power is shifting and being exercised in the NT. These have included:

- The introduction of a regime to indefinitely detain serious sex offenders.[67]
- Changes to the *Bail Act* to expand the range of offences for which there is a presumption against bail.[68]
- The introduction of 'temporary beat locations' which sees police stationed outside bottle shops, asking people where they intend to consume their alcohol. In the absence of a satisfactory answer, you are warned against making a purchase and if you ignore that warning the alcohol is seized. It should be remembered that very many places where Aboriginal people now live—including all communities and town camps—are restricted areas in which it is unlawful to

consume alcohol. This regime has replaced the earlier policy of the 'Banned Drinkers Register' which also sought to restrict the supply of alcohol, but did so by prohibiting supply to 'banned drinkers' and placing the onus on licensees, rather than using the resources and power of the police.

Power in the NT has continued to be concentrated in the hands of the executive, with the judiciary increasingly having their powers circumscribed.

THE SHIFT AND CONCENTRATION OF POWER

In 1999, with the NT's foray into mandatory sentencing for property offences in full swing, Russell Goldflam and I reflected on how the laws worked to shift power in the system. We noted that the laws brought about 'a disturbing concentration of power' and exemplified 'a style of governance characterised by punitive and socially divisive targeting of already disempowered groups in the community'.[69]

The more recent laws surveyed above highlight that power in the NT has continued to be concentrated in the hands of the executive, with the judiciary increasingly having their powers circumscribed.

Mandatory sentencing regimes not only take power from the courts, but give significant power to police and prosecutions, whose discretionary decisions can have a bigger impact on whether a person goes to jail and for how long than the decisions of judges and magistrates do. An obvious example in the current mandatory sentencing regime for violent offences relates to whether physical harm is to be alleged, a factor that can trigger a 'level 5 offence'. This can make the difference between a 12-month mandatory sentence and three months, potentially giving a junior prosecutor more power over the sentence a person receives than the court.

The power given to police by laws such as APOs and paperless arrests is also extraordinary and the potential for policy impunity is a particular cause for concern.

REFLECTING ON THE IMPACT

We have seen that this recent slew of laws will have their heaviest impact upon Aboriginal people. Avoiding the argument about whether Aboriginal people are the 'target' of laws such as paperless arrests, APOs and alcohol mandatory treatment, it is clear that Aboriginal people bear the brunt of the coercive power they give to police. And this was known when the laws were introduced.

While the reasons for this disproportionate impact are complex, the simple reality is that Aboriginal people in the NT are more likely to come to the attention of police for offences and while under the influence of alcohol. And when they do, police discretion is less likely to be exercised in their favour.[70]

The NT prides itself on its cultural and social diversity. Many of us living here like to portray ourselves as 'practically reconciled'. But what does this latest marshalling of the powers of the state against Aboriginal people, in ways that are designed to avoid scrutiny, accountability and transparency, say about the character of our society and the place of Aboriginal people in it? What damage does it do to our social fabric? What message does it send to those who already feel deeply the history—and in the NT it is particularly recent history—of colonisation, frontier violence and laws and policies that were explicitly discriminatory against Aboriginal people, not least the policies of child separation that gave us the Stolen Generation?

As we engage in our national 'conversation' about constitutional recognition of Aboriginal people, we might ask ourselves how meaningful that will be when Aboriginal people continue to be locked up for drinking in public.

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1 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 26 November 2014 (The Hon John Elferink, Attorney-General).

2 Australian Bureau of Statistics, 'Corrective Services, Australia, June Quarter 2015' <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0>.

3 Australian Institute of Health and Welfare, 'Youth Justice in Australia 2013–14', *Bulletin 127*, April 2015 <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550805>.

4 *North Australian Aboriginal Justice Agency Ltd v Northern Territory* [2015] HCA 41 ('*NAAJA v NT*').

5 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 26 November 2014 (The Hon John Elferink, Attorney-General).

6 *Police Administration Act* s 133AB(1).

7 Ibid s 133AB(2).

8 Ibid s 133AB(3).

9 *Summary Offences Act* s 78.

10 Ibid s 53(1).

11 Ibid s 65AA.

12 Ibid s 76.

13 Ibid s 85.

14 *Liquor Act* s 101W.

15 *Summary Offences Act* s 47.

16 *Misuse of Drugs Act* ss 9(1), 20A.

17 *Inquest into the death of Perry Jabanangka Langdon* [2015] NTMC 16, [66].

18 The regime operates following an arrest without a warrant under the existing power in *Police Administration Act* s 123: see *Police Administration Act* s 133AB(1)(a).

19 It also involves more paperwork than bringing a person to court on a summons.

20 *Police Administration Act* s 133AC(1).

21 Ibid.

22 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 26 November 2014 (The Hon John Elferink, Attorney-General).

23 Ibid.

24 Above n 17; I appeared as counsel for the family of the deceased in this matter.

25 Contrary to s 101U of the *Liquor Act* (NT).

26 Above n 17, [28].

27 Ibid [71].

28 Ibid [77].

29 Ibid [73].

30 Ibid [10].

31 Ibid [90].

32 *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51.

33 Above n 4, [28] (French CJ, Kiefel and Bell JJ); [214]–[215] (Nettle and Gordon JJ).

34 Ibid [43]–[44] (French CJ, Kiefel and Bell JJ); [239] (Nettle and Gordon JJ).

35 Ibid [38].

36 Ibid [44].

37 Ibid [92].

38 Ibid [102].

39 Ibid [103].

40 Ibid [118].

41 Ibid [133]–[134].

42 Ibid [155]–[181].

43 Ibid [186].

44 This practice was implemented both in the case of Kumanjayi Langdon and the second plaintiff in the High Court, Miranda Bowden. Evidence of this being official police policy was also before the Territory Coroner in the inquest into the death of Kumanjayi Langdon, in the form of police training materials.

45 Helen Davidson, 'NT admits paperless arrest laws misused in Aboriginal death in custody case', *The Guardian*, 12 November 2015 <www.theguardian.com/australia-news/2015/nov/12/nt-admits-paperless-arrest-laws-misused-in-aboriginal-death-in-custody-case>.

46 Above n 4, [28] (French CJ, Kiefel and Bell JJ); [231] (Nettle and Gordon JJ).

47 Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report,* (1991), see recommendation 87 and also recommendations 79–85 in relation to the decriminalisation of public drunkenness.

48 Russell Goldflam, 'Incarcerationalism', *Balance*, April 2013 <www.clant.org.au/images/images/balance-column/Balance_April_2013.pdf>.

49 *Sentencing Act* (NT) Pt 3, Div 6A.

50 Ibid s 78DI.

51 *Orsto v Grotherr* [2015] NTSC 18; see also *R v Duncan* [2015] NTCCA 2; *Dhamarrandji v Curtis* [2014] NTSC 39.

52 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 12 February 2013 (The Hon John Elferink, Attorney-General).

53 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 12 February 2013 (The Hon Bess Price).

54 *Alcohol Mandatory Treatment Act 2013* (NT) ss 8–10.

55 *Alcohol Mandatory Treatment Amendment Act 2014* (NT).

56 Lander, Gray and Wilkes, 'The Alcohol Mandatory Treatment Act: evidence, ethics and the law', (2015) 203(1) *Med J Aust* 47, 49.

57 Amos Aikman, 'Law to push drunks off the streets, into the bush', *The Australian* 19 October 2012 <http://www.theaustralian.com.au/national-affairs/state-politics/law-to-push-drunks-off-streets-into-the-bush/story-e6frgczx-1226498885505>.

58 *Alcohol Protection Orders Act 2014* (NT) s 6.

59 Ibid s 5(1)(a) and (b).

60 Ibid ss 18–19.

61 Ibid s 5(1)(b).

62 Ibid s 5(2).

63 Ibid ss 9–10.

64 Ibid ss 11–13.

65 Above n 47.

66 *Munkara v Bencsevich & Ors*, 77/2014 (21437457). The challenge was unsuccessful but, at the time of writing, reasons have not yet been provided. For a discussion of the issues in the case, see Jonathon Hunyor, 'A glass half empty? Alcohol, racial discrimination, special measures and human rights', *Perspectives on the Racial Discrimination Act* (2015) <https://www.humanrights.gov.au/our-work/race-discrimination/publications/perspectives-racial-discrimination-act-papers-40-years>.

67 *Serious Sex Offenders Act 2013* (NT).

68 *Bail Amendment Act 2015* (NT).

69 Goldflam and Hunyor, 'Mandatory Sentencing and the Concentration of Powers' (1999) 24(5) *Alternative Law Journal* 211, 211.

70 Again the reasons for this are complex. See for example, Allard, Stewart, Chrzanowski, Ogilvie, Blrks and Little, 'Police diversion of young offenders and Indigenous over-representation', *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology (2010) <http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi390.pdf>; Luke and Cunneen, 'Aboriginal Over-representation and Discretionary Decisions in the NSW Juvenile Justice System', (1996) 1(1) *Australian Indigenous Law Reporter* 95.